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978-1-107-14070-7 - The Ethics of Influence: Government in the Age of Behavioral Science

Cass R. Sunstein

Excerpt

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CHAPTER I

The Age of Behavioral Science

We live in an age of psychology and behavioral economics – the behavioral sciences.

For-profit companies are using behavioral research every day. They want to learn how people think and to use that learning to make money. Charitable organizations consult behavioral scientists to find out how they might attract donors and increase donations. For their part, public officials are increasingly turning to the behavioral sciences to promote their goals. They are influencing people in multiple ways in order to reduce poverty, to increase employment, to clean the air, to improve health, to encourage people to vote, and to increase safety on the highways. What are the ethical constraints on their actions?

From the ethical point of view, there are large differences between coercion and influence. A single person can certainly coerce another: A thief, armed with a gun, tells you, “Your money or your life.” Coercion might also be said to occur when employers inform their employees that unless they submit to certain requests, they will lose their jobs. Many of the most objectionable forms of coercion come from governments, which may threaten people with jail, or with large fines, if they do not do exactly what public officials want. In his great book *On Liberty*,¹ John Stuart Mill argued that coercion was unacceptable unless it was designed to prevent “harm to others.” Mill’s target was the use of force.

Mere influences seem far less objectionable. If a beggar sitting on a street corner asks you for money, you are free to refuse. The same is true if an employer asks you to do certain tasks, while also making it clear that you are at liberty to decline. If a friend manipulates you into doing what she wants you to do, rather than what you want to do, you might not be

¹ See JOHN STUART MILL, *On Liberty*, in THE BASIC WRITINGS OF JOHN STUART MILL: ON LIBERTY, THE SUBJECTION OF WOMEN, AND UTILITARIANISM (2002/originally published 1863).

thrilled, but at least you haven't been forced (and you might admire her for her ingenuity). A government might engage in public education campaigns, or even propaganda, but if people are allowed to ignore what public officials say, the problem, and the risks to liberty and well-being, might not seem all that severe.

That is certainly a reasonable view, and as we will see in some detail, most people seem to hold it – not only in the United States, but in Sweden, Germany, Italy, France, the United Kingdom, Hungary, and Denmark as well. But it would be a mistake to underestimate the effects of influence and the extent to which it can be used for good or for evil. We keep learning about its nature, and its subtle and sometimes decisive power. Dale Carnegie's 1936 classic, *How to Win Friends and Influence People*,² has sold many millions of copies, in part because of its terrific and often hilarious insights into how to move people in the directions you want. Some of Carnegie's advice is pretty innocuous (but smart): "Don't criticize, condemn, or complain." (It really is a good idea to avoid complaints.) "Give honest and sincere appreciation." "Become genuinely interested in other people." "Talk in terms of the other person's interest." Some of his advice is clever: "The only way to get the best of an argument is to avoid it." (Carnegie thinks that you can't win an argument, and it would be foolish to argue with him about that.) A few of his ideas might be thought to get close to an ethical line: "Start with questions to which the other person will answer yes." "Let the other person feel the idea is his or hers." (Very effective, even though it can be counted as a form of manipulation.)

Carnegie's book is wise, even brilliant, and somehow also humane, because it treats human foibles with kindness, gentleness, and humor rather than contempt. Everyone should read it (and read it again, every few years). But it is a product of Carnegie's own experiences and intuitions, rather than of empirical study. The preeminent modern discussion, initially published in 1984, is Robert Cialdini's *Influence*,³ which offers six principles, all of them with strong empirical foundations. One of these is *reciprocity*: People like to return favors, and if you give someone something (a discount, a little cash, and a token), you'll probably get something back. Another principle is *social proof*: If a lot of people seem to think something, or to do something, others will be inclined to

² DALE CARNEGIE, *HOW TO WIN FRIENDS AND INFLUENCE PEOPLE* (1936).

³ ROBERT CIALDINI, *INFLUENCE* (1984).

think it or do it too. (A good way to change behavior is to tell people that other people are now doing what you want them to do.) Another is *scarcity*: People find things more attractive when they seem hard to get or sharply limited in availability.

If you know about these principles, you will be in a far better position to sell things (including yourself) to others. Public officials and governments can do the same thing. Maybe that's fine, but we can easily imagine uses of Cialdini's work that would seem ethically questionable or worse. And in the last forty years, psychologists and behavioral economists have taught us immeasurably more about how human beings can affect one another.

A lie is a form of influence, and it is usually unacceptable, not least if it comes from governments. Outside of highly unusual circumstances, public officials should not lie. A statement might be literally true, and hence not a lie, but nonetheless deceptive or manipulative; if a friend deceives or manipulates you, he isn't being particularly friendly. To be sure, politicians would be well advised to read Carnegie and Cialdini and make use of what they learn. (Many politicians have a good intuitive sense of their ideas.) But most people would agree that politicians should not manipulate people – certainly as a general rule. What counts as manipulation? What are the ethical constraints on influence, when it comes from government?

To answer that question, we need some kind of framework. Ethical states focus above all on four values: welfare, autonomy, dignity, and self-government. If they are concerned with human welfare – and they had better be – such states will try to increase the likelihood that people will have good lives. Partly for that reason, they will allow people to go their own way, and in that sense respect personal autonomy (at least most of the time). If they are concerned with dignity – and they had better be – they will treat people with respect (all of the time). They will ensure that people can govern themselves, which means that people must have the authority to control their leaders.

The four values call for firm constraints on what governments can do, whether they are engaging in coercion or merely imposing influence. Authoritarian states do not allow autonomy; they do not respect dignity; they forbid self-government; they tend not to promote people's welfare. But the four values also require governments to act, not merely to refrain from acting. However we define it, human welfare does not come from the sky. Self-government is a precious achievement, requiring a certain kind of

architecture. People who are subject to violence, uneducated, or desperately poor cannot be autonomous, or cannot enjoy such autonomy as they may have. A dignified life requires background conditions and social support.

It is true that the four values require investigation. Perhaps one of them is central and the others are derivative. Many people would give pride of place to dignity; many others insist that human welfare is central. We might also find conflicts among the values – as, for example, when the pursuit of welfare undermines autonomy, or when self-government places individual dignity at risk. But it is often possible to make progress by bracketing the deepest theoretical questions, and by seeing if some approaches compromise none of the values and can attract support from people who are committed to all of them, or who are uncertain of their relationship. I hope to show that many of the most promising approaches have exactly those virtues.

It is also true that many people distrust government. They believe that it is biased or ignorant, or buffeted about by powerful interest groups. They do not want it thinking all that much about how to improve people's lives, whether through coercion or even through influence. Individuals and free markets should be doing that, not public officials. But that is a pretty extreme position, and even if some version of it is right, government has to lay the groundwork – for example, by protecting property rights and by enforcing contracts. Efforts to lay the groundwork will coerce and influence, and even the most minimal state must be justified and compared to the alternatives. Perhaps it will promote people's welfare and increase their freedom, but perhaps not.

To know, we have to investigate some ethical questions. We also have to know a lot about the relevant facts – and if we do not, we will have to be honest that we are speculating. What does an ethical state do? What does it avoid? What makes a state unethical? What kinds of distinctions, if any, should we make between acts and omissions?

If we keep the four governing values in mind, we will be in a better position to answer such questions. We will be inclined to favor acts of government that promote those values, and to reject acts of government that violate one or more of them. As we shall see, we will be especially well disposed toward approaches that preserve freedom of choice, but that also steer people in directions that promote human welfare, dignity, and self-government. Much of my discussion here will be devoted to such approaches and to seeing how and when they can avoid crossing ethical lines.

A Growing Movement

Government has many tools in its toolbox. It can prohibit and it can require. It can use the criminal law. It can threaten and it can promise. It can tax and it can subsidize. It can do much more.

Coercion runs into distinctive objections. It abridges freedom of action, for better or for worse; it can reduce economic growth; and it can have unintended bad consequences. A ban on cigarette smoking, for example, would create black markets, and in the United States, the era of Prohibition was mostly a disaster. To be sure, coercion has an important place, even in the freest societies. No reasonable person thinks that murder, rape, and assault should be allowed, and if the goal is to protect health, safety, and the environment, a nation will have to rely on mandates and bans. But if freedom and welfare matter, coercion is often best avoided, and so the last decade has seen a remarkably rapid growth of interest in choice-preserving, low-cost tools, sometimes called *nudges*.⁴ For example, many governments are keenly interested in disclosing information; in providing reminders and warnings; and in using default rules, which establish what happens if people do nothing. Some of those approaches can save a lot of lives.⁵

For public institutions, many of the most popular tools, and perhaps increasingly many, involve nudges, understood as interventions that maintain people's freedom of choice, and uses of *choice architecture*, understood as the background conditions for people's choices. (I will explore definitional issues in more detail later.) In the United States,⁶ the United Kingdom,⁷ Germany,⁸ and many other nations, governments have enlisted people with expertise in behavioral science, with the goal of identifying approaches that will help to achieve widely shared social ends – increasing economic growth, cutting the cost of government, promoting compliance with the law, improving public health, reducing poverty and corruption, protecting the environment, and increasing national security. As we shall see, national surveys suggest that most citizens, in countries with highly

⁴ Catalogs can be found in OECD, *REGULATORY POLICY AND BEHAVIORAL ECONOMICS* (2014). European Commission, *Behavioral Insights Applied Policy: Overview across 32 European Countries*.

⁵ An especially good demonstration is *BEHAVIORAL ECONOMICS AND PUBLIC HEALTH* (Christina A. Roberto and Ichiro Kawachi eds., 2015).

⁶ See, e.g., Cass A. Sunstein, Simple (2013); Courtney Subramanian, "Nudge" Back in Fashion in White House, *TIME*, August 9, 2013.

⁷ See, e.g., DAVID HALPERN, *INSIDE THE NUDGE UNIT* (2015); Tamsin Rutter, *The Rise of Nudge – The Unit Helping Politicians to Fathom Human Behaviour*, *THE GUARDIAN*, July 23, 2015.

⁸ See, e.g., Philip Plickert and Hanno Beck, *Kanzlerin sucht Verhaltensforscher*, *FRANKFURTER ALLGEMEINE ZEITUNG*, August 26, 2014.

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diverse histories and cultures, approve of nudges. While many people oppose coercion as such, they show far less skepticism about nudging.

Most advanced nations already have some kind of Council of Economic Advisers, focusing on economic growth and decreasing unemployment. Should they also have a Council of Psychological Advisers, focusing on behavioral science and choice architecture, and exploring when people could benefit from a nudge? Maybe some already do. The United Kingdom has its own high-profile “nudge unit.” In 2015, President Barack Obama memorialized the efforts of the United States with an executive order, formally committing the nation to uses of behavioral sciences. The importance of this executive order cannot be overstated in view of its likely role in making behavioral science a permanent part of American government (see Appendix C).

Consider three exemplary initiatives from the United States – which have analogues in many nations – and ask whether any of them raises serious ethical problems.

1. In 2010, the Federal Reserve Board adopted a regulation to protect consumers, and especially poor consumers, from high bank overdraft fees.⁹ The regulation forbids banks from automatically enrolling people in “overdraft protection” programs; instead, customers have to sign up. In explaining its action, the Board drew on behavioral research showing that “consumers are likely to adhere to the established default rule, that is, the outcome that would apply if the consumer takes no action.”¹⁰ The Board also referred to the phenomenon of “unrealistic optimism” – suggesting that consumers might well underestimate the likelihood that they will not overdraw their accounts.
2. In 2014, the Food and Drug Administration (FDA) proposed to revise its “nutrition facts” panel, which can be found on almost all food packages.¹¹ The panel is a nudge, and the FDA wanted it to be as clear and helpful as possible. Drawing directly on behavioral science, the FDA stated that the new label could “assist consumers by making the long-term health consequences of consumer food choices more salient and by providing contextual cues of food consumption.”¹² Explaining

⁹ Federal Reserve Board Requirements for Overdraft Services, 12 C.F.R. § 205.17 (2010).

¹⁰ Federal Reserve System Electronic Fund Transfers, 74 Fed. Reg. 59038 (2009).

¹¹ U.S. Food & Drug Administration, *Preliminary Regulatory Impact Analysis: Nutrition Facts/Serving Sizes 2* (2014), available at www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocuments/RegulatoryInformation/Labeling/Nutrition/UCM385669.pdf.

¹² *Id.* at 5.

that consumers might need this information, the FDA added that the “behavioral economics literature suggests that distortions internal to consumers (or internalities) due to time-inconsistent preferences, myopia or present-biased preferences, visceral factors (e.g., hunger), or lack of self-control, can also create the potential for policy intervention to improve consumer welfare.”¹³ I will have more to say about some of these terms later, but the basic idea is that consumers might focus on immediate pleasures and neglect long-term health consequences. A good nutrition facts panel could help.

3. In 2014, the FDA proposed to assert authority over a range of tobacco products.¹⁴ In explaining its action, it referred to behavioral research, emphasizing that “consumers may suffer from time-inconsistent behavior, problems with self-control, addiction, and poor information, which prevent them from fully internalizing the benefits of reducing tobacco use.”¹⁵ The FDA added that there are “opportunities for regulation of tobacco products to enhance social welfare for the population at large. Time inconsistency exists when consumers use lower rates of discount for consequences far in the future than for consequences close to the present. Time-inconsistent consumers make current decisions that they would not make from the perspective of their future selves.”¹⁶

From these examples, it should be plain that in the United States, psychology and behavioral science are playing a major role in important policy domains. The Consumer Financial Protection Bureau, created in 2010, is particularly interested in using behavioral research to protect consumers in financial markets. Consider its excellent mantra: “Know before you owe.”¹⁷ Among its main goals are clarity and simplification, so that consumers can understand what they are signing, and so that they can engage in genuine comparison shopping. In financial markets, companies might well have an incentive to baffle people or to offer terms that are tempting and attractive, but not really beneficial.¹⁸ The Bureau is working to counteract that problem, with close reference to how people actually think. It turns out

¹³ *Id.* at 6.

¹⁴ Department of Health and Human Services, U.S. Food & Drug Administration, *Deeming Tobacco Products to Be Subject to the Food, Drug, and Cosmetic Act 6* (2014), available at www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/UCM394933.pdf.

¹⁵ *Id.* at 15. ¹⁶ *Id.* at 10.

¹⁷ See Consumer Financial Protection Bureau, *Credit Cards: Know before You Owe*, available at www.consumerfinance.gov/credit-cards/knowbeforeyouowe/.

¹⁸ See GEORGE AKERLOF AND ROBERT SHILLER, *PHISHING FOR PHOOLS* (2015).

that making sensible comparisons can be hard – how does one mortgage really stack up against another? – and simplification can help a lot.

In 2014, the United States created its behavioral insights team, called the White House Social and Behavioral Sciences Team (SBST). The team is overseen by the White House Office of Science and Technology Policy and is engaged in a range of projects designed to test the effects of various policies, with close reference to behavioral research. With some simple interventions, it has produced major success stories, helping more members of the military service to save for retirement, more students to go to college, more veterans to take advantage of education and job-training benefits, more farmers to obtain loans, and more families to obtain health insurance.¹⁹ For example, just one behaviorally informed email, specifying the three steps needed to enroll in a workplace savings plan, and explaining the potential value of making even small contributions, nearly doubled the enrollment rate for members of the military service.

In 2010, the United Kingdom became the first to create a Behavioural Insights Team (BIT), with the specific goal of incorporating an understanding of human psychology into policy initiatives.²⁰ David Halpern, the leader of BIT, is an expert on behavioral science and has spearheaded a wide range of reforms to save money and to extend lives. When it was a formal part of the Cabinet Office, BIT's official website stated that its "work draws on insights from the growing body of academic research in the fields of behavioural economics and psychology which show how often subtle changes to the way in which decisions are framed can have big impacts on how people respond to them."

Influenced by the underlying psychological research, the Team enlists the acronym "EAST" to capture its approach: Easy, Attractive, Social, and Timely.²¹ BIT has used behavioral science to promote initiatives in numerous areas, including smoking cessation,²² energy efficiency,²³ organ

¹⁹ See Social and Behavioral Sciences Team, *Annual Report* (2015), available at www.whitehouse.gov/sites/default/files/microsites/ostp/sbst_2015_annual_report_final_9_14_15.pdf.

²⁰ See Tamsin Rutter, *The Rise of Nudge – The Unit Helping Politicians to Fathom Human Behaviour* (July 23, 2015).

²¹ See generally Owain Service et al., *EAST: Four Simple Ways to Apply Behavioral Insights* (2015), available at www.behaviouralinsights.co.uk/wp-content/uploads/2015/07/BIT-Publication-EAST_FA_WEB.pdf.

²² See Behavioural Insights Team, *Applying Behavioral Insight to Health* (2010), available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/60524/403936_BehaviouralInsight_acc.pdf, at 8.

²³ See Behavioural Insights Team, *Annual Update 2011–2012*, available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/83719/Behavioural-Insights-Team-Annual-Update-2011-12_o.pdf.

donation,²⁴ consumer protection,²⁵ and tax compliance.²⁶ BIT has had some big successes. For example:

- A message designed to prompt people to join the Organ Donor Registry added no fewer than 100,000 people to the Registry in a single year;²⁷
- Automatically enrolling individuals in pension schemes increased saving rates for those employed by large firms in the UK from 61 to 83 percent;²⁸
- A behaviorally informed approach increased tax payment rates from delinquent taxpayers by over 5 percentage points.²⁹

In 2014, the Team moved from the Cabinet Office to become a partly privatized joint venture, a self-described “social purpose company” owned by the government, the team’s employees, and Nesta (an innovation charity).³⁰

Other nations have expressed keen interest in the work of the Behavioral Insights Team, and its operations have significantly expanded. Several cities in the United States, including New York and Chicago, are working with BIT or enlisting behavioral ideas. The idea of “nudge units,” of one or another kind, is receiving worldwide attention. In Germany, Australia, Denmark, Sweden, Canada, Singapore, Israel, the Netherlands, South Korea, and Mexico, among other countries, behavioral insights have been used in discussions of environmental protection, financial reform, energy policy, and consumer protection. In 2014, a study by the Economic and Social Research Council found that no fewer than 136 nations have incorporated behavioral findings into some aspects of public policy, and that 51 “have developed centrally directed policy initiatives that have been influenced by the new behavioural sciences.”³¹

Behavioral science has drawn considerable (and mounting) attention in Europe, in particular. The Organisation for Economic Development and Cooperation (OECD) has published a Consumer Policy Toolkit that

²⁴ See Behavioural Insights Team, *Applying Behavioral Insight to Health* (2010), at 10.

²⁵ See Behavioural Insights Team, *Annual Update 2011–2012*. ²⁶ *Id.*

²⁷ See Owain Service et al., *EAST: Four Simple Ways to Apply Behavioral Insights* (2015), at 32.

²⁸ *Id.* at 4. ²⁹ *Id.* at 5.

³⁰ See, e.g., Patrick Wintour, *Government’s Behavioural Insight Team to Become a Mutual and Sell Services*, THE GUARDIAN, February 4, 2014.

³¹ Mark Whitehead et al., *Nudging All over the World 4* (2014), available at <https://changingbehaviours.files.wordpress.com/2014/09/nudgedesignfinal.pdf>.

recommends a number of initiatives rooted in behavioral findings.³² A report from the European Commission, called *Green Behavior*, enlists behavioral science to outline policy initiatives to protect the environment.³³ In the European Union, the Directorate-General for Health and Consumers has also shown the influence of psychology and behavioral economics.³⁴ Private organizations, notably including the European Nudge Network, are using behavioral insights creatively to promote a variety of environmental, health-related, and other goals. Emphasizing behavioral findings, Singapore has initiated a large number of reforms in this domain.³⁵ A Norwegian group, GreeNudge, focuses on environmental protection.³⁶

There has been particular interest in using psychological and behavioral research in the areas of poverty and development, with considerable attention from the World Bank, whose 2015 report was devoted entirely to this topic.³⁷ In the words of Jim Yung Kim, president of the World Bank, “insights into how people make decisions can lead to new interventions that help households to save more, firms to increase productivity, communities to reduce the prevalence of diseases, parents to improve cognitive development in children, and consumers to save energy. The promise of this approach to decision making and behavior is enormous, and its scope of application is extremely wide.”³⁸

As the World Bank report demonstrates, behaviorally informed approaches might help combat corruption and inefficiency, and also make existing programs more effective, in part by combating low take-up rates and improving well-intentioned but counterproductive initiatives that are not alert to how people think. It is worth underlining the problem of low take-up rates.³⁹ Many private and public institutions have important

³² ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, CONSUMER POLICY TOOLKIT (2010).

³³ See generally European Commission, Science for Environment Policy, *Future Brief: Green Behaviour 2012*, available at http://ec.europa.eu/environment/integration/research/newsalert/pdf/FB4_en.pdf.

³⁴ See Directorate General for Health and Consumers, *Consumer Behaviour: The Road to Effective Policy-Making 2010*, available at <http://dl4a.org/uploads/pdf/1dg-sanco-brochure-consumer-behaviour-final.pdf>.

³⁵ See DONALD LOW, BEHAVIORAL ECONOMICS AND POLICY DESIGN: EXAMPLES FROM SINGAPORE (2011).

³⁶ GreeNudge, *How We Work*, available at www.greenudge.no/how-we-work/.

³⁷ See generally World Bank, *World Development Report, Mind, Society, and Behavior* (2015), available at www.worldbank.org/content/dam/Worldbank/Publications/WDR/WDR%202015/WDR-2015-Full-Report.pdf.

³⁸ *Id.* at xi.

³⁹ See Saurabh Bhargava and Dayanand Manoli, *Psychological Frictions and the Incomplete Take-Up of Social Benefits: Evidence from an IRS Field Experiment*, 105 AM. ECON. REV. 3489–3529 (2015).